

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
) Chapter 11
PG&E CORPORATION AND PACIFIC)
GAS AND ELECTRIC COMPANY) San Francisco, California
) Thursday, October 15, 2020
Debtors.) 10:00 AM
)
) STATUS CONFERENCE REGARDING
) MOTION SECURITIES LEAD
) PLAINTIFFS' MOTION TO APPLY
) BANKRUPTCY RULE 7023 AND
) CERTIFY A LIMITED CLASS FILED
) BY SECURITIES LEAD PLAINTIFF
) AND THE PROPOSED CLASS [9152]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (Via CourtCall):

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SAN FRANCISCO, CALIFORNIA, THURSDAY, OCTOBER 15, 2020, 10:00 AM

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(Call to order of the Court.)

THE CLERK: Court is now in session. The Honorable Dennis Montali presiding. Calling the matter of PG&E Corporation.

THE COURT: Well, good morning, everyone. This is Judge Montali. We -- once again, we've attracted a crowd for what I thought was a small matter, so I'm going to ask again that you make your appearance only if you have something to say.

I will ask first, though, Mr. Slack, are you on the call?

MR. SLACK: I am, Your Honor.

THE COURT: Okay. And Mr. Dubbs?

MR. DUBBS: Yes, Your Honor.

THE COURT: All right. For the -- I don't know if anyone else needs to be on the call because, Mr. Dubbs, you were the one that asked for the hearing, and I thought everything was clear in the email exchange, so I'm not sure where we're going today. You tell me where we're going.

MR. DUBBS: Well, I think we seek the guidance of the Court. I made a mistake in terms of -- for which I apologize --

THE COURT REPORTER: Excuse me, Counsel.

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1 MR. DUBBS: -- in terms of --

2 THE COURT REPORTER: Counsel, this is Lorena Parada.

3 MR. DUBBS: This is Thomas Dubbs.

4 THE COURT REPORTER: Please state your -- yes, thank
5 you.

6 THE COURT: Okay. Go ahead.

7 MR. DUBBS: This is Thomas Dubbs. I'm sorry.

8 We seek the guidance of the Court. I made a mistake,
9 for which I apologize. Mr. Slack can tell us what the
10 prejudice is, and we're prepared to take the short end of the
11 stick if there's any prejudice. And I agreed to what I thought
12 was a scheduling matter but was presented as an alternative but
13 had incorporated into it, in the Weil Gotshal letter, what they
14 call a bifurcation concept, which we -- depending upon how one
15 defines it -- we strongly object to. And we wanted to have
16 this discussion with the Court to try to make sure that
17 everyone was on the same page and knew what the issues were and
18 what the timing of the issues were. And that's the reason I
19 wrote the letter.

20 Now, to that end, just by way of a very short
21 paragraph of background, the Court asked all counsel to come up
22 with proposals or structures that would help address the
23 problem facing the Court and facing all of us of how to deal
24 with 6,000 claimants in a constructive, equitable fashion. And
25 Mr. Slack and his colleagues have come up with an ADR proposal,

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1 and we came up with another proposal, which is in the form of a
2 specific, narrow kind of class action, coupled with a mediation
3 component, which we believe is more equitable and more
4 efficient.

5 Now, our proposal legally implicates both 7023 and
6 Rule 23, and my colleagues on the other side believe strongly
7 that 7023 issues and Rule 23 issues have to be separated out,
8 for which they use the term "bifurcated". We briefed them
9 together as if they were one package.

10 We've assumed, with some reason, that the Court
11 understands 7023 and Musicland as well as he understands the
12 back of his hand, so we focused mainly on the Rule 23 issues
13 and the narrowness of the Rule 23 issues, because this is an
14 issue class focusing on specific, narrow issues, including the
15 administration of the estate and how that interacts with a
16 mediation structure that we submit can be successful, so long
17 as we mediate and decide roughly nine separate issues, and once
18 we have nine buckets we can put the 6,000 claimants into one of
19 those nine or ten buckets, and that that's ultimately more
20 efficient.

21 Now, my colleagues on the other side, what we are
22 fearful of -- and this may be paranoia on our part, but even
23 paranoids have enemies -- we think that the attempt to --

24 THE COURT: Even paranoid people get picked on
25 sometimes, right, Mr. Dobbs?

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1 MR. DUBBS: That's true.

2 THE COURT: Right. Okay.

3 MR. DUBBS: And that's fine, and we're all big boys.

4 The problem that we have, fundamentally, is that if
5 the 7023 is split off from the Rule 23, the Court will not be
6 addressing more or less simultaneously what are two very
7 different, competing structures to handle the same problem and
8 that the specter of discovery, which we strongly disagree with,
9 will be used as an excuse to delay the addressing of the Rule
10 23 narrow class so that that would drive incentives to adopting
11 their ADR approach, which, as the Court knows or will know, has
12 been objected to by seventy institutions, including CalPERS,
13 CalSTRS, and Chevron, as well as a bunch of other big money
14 institutions. And that's what we --

15 THE COURT: Let me interrupt you --

16 MR. DUBBS: -- that's what we're afraid of.

17 THE COURT: -- only to say, Mr. Dubbs -- Mr. Dubbs,
18 let me just tell you.

19 MR. DUBBS: I'm sorry, Your Honor.

20 THE COURT: The Court has not, and I do not, review
21 things in advance. So the ADR motion is two weeks out, and I
22 haven't looked at anything. So I don't know who's objected or
23 not, and similarly I haven't drilled down on your motion to
24 even understand much about it, other than what I did with the
25 prior 723 (sic) motion last year. So I don't -- I'm somewhat

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1 naive about what's been going on on the docket, but go ahead.

2 MR. DUBBS: Well --

3 THE COURT: Tell me what you think we should do, and
4 then I'll see what Mr. Slack thinks we should do.

5 MR. DUBBS: Well, what I think we should do -- and I
6 want to put aside timing for a moment -- what I think we should
7 do is we should have briefing on our motion, which incorporates
8 7023 concepts and the class concepts and how the class concepts
9 incorporate a mediation component; that's our structure. And
10 that structure should be compared by the Court to their
11 structure.

12 And after there's argument and discussion about that
13 structure and the Court has reviewed the papers on those two
14 structures, then the table is set and Mr. Slack can say, well,
15 that's great, but we need discovery on this, this, and this, or
16 he can say whatever he wants to say. But to break our
17 structure into component parts ab initio before the Court has
18 viewed what our structure is, we have problems with.

19 THE COURT: So if I could turn it around --

20 MR. DUBBS: And I think that's the --

21 THE COURT: -- I mean, to use your term and what
22 you -- you don't want to bifurcate your motion; you want your
23 motion unbifurcated (sic), considered concurrently with what
24 we'll call the debtors' ADR motion. That work?

25 MR. DUBBS: That's correct?

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1 THE COURT: Is that correct?

2 MR. DUBBS: Yep.

3 THE COURT: Okay.

4 MR. DUBBS: Absolutely. And if there are issues that
5 flow from that that Mr. Slack convinces the Court he needs
6 discovery on or he needs something else on or he needs more
7 briefing on, that's fine. We will accept that risk. But we
8 don't want half a loaf before the Court with their full
9 structure before the Court, and so we don't have a real
10 comparison for the Court of our two usable rules.

11 THE COURT: Okay. Mr. Slack, are you --

12 MR. SLACK: Your Honor, Richard Slack from Weil,
13 Gotshal for the reorganized debtor.

14 So from our perspective, we made our motion on
15 September 1st, and we'd like to get started with resolving the
16 securities' proofs of claim. And we believe that the
17 reorganized debtors' proposed ADR procedure, as well as the
18 briefing schedule that we set out in our letter, is the most
19 efficient way to do that.

20 Your Honor, it's important right up front to
21 understand sort of the practical impact of PERA's request to
22 put everything on the same schedule, and that is that moving
23 forward with everything now will require discovery on the Rule
24 23. And I think, Your Honor, even though it probably isn't a
25 major portion of what you pay attention to, the fact is is that

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1 Rule 23 motions, especially securities Rule 23 motions, it is
2 very -- not only typical to have discovery, but that discovery
3 can last up to five, six months. I don't think it's going to
4 take that here, but there's clearly going to be some discovery
5 that we're entitled to as a matter of due process before we
6 have to file our brief. And so there's going to be a delay of
7 some number of months before this could all get heard together
8 if we go from their schedule.

9 And as Your Honor knows from doing the prior 7023
10 motion, there's a two-step process. The movant has to satisfy
11 the initial gatekeeping factors, and then there's a Rule 23
12 factor. And in fact, in their last motion, Your Honor, as
13 you'll recall, they bifurcated and said it was fine. They
14 bifurcated the initial matters dealing with Musicland and the
15 other factors with the Rule 23. So they did the bifurcation
16 then, and we think that that is the right way of doing this.

17 And when you look at the -- you put their 7023 motion
18 in perspective, I heard Mr. Dubbs talking about it, what PERA
19 actually seeks here -- and it's extraordinary -- is to have a
20 class of people who file proofs of claim certified under
21 specific provisions of Rule 23, and those provisions are
22 mandatory, nonopt-out classes, which means that thousands of
23 individuals who file their own proofs of claim here, including
24 those that have their own counsel, filed with their own
25 counsel, would have to accept, mandatorily, their class with

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1 PERA as their representative and not be able to settle without
2 PERA's say-so. And so ultimately, when we get to the class
3 issues, we think they're going to fail out of the gate.

4 And the other thing, Your Honor, is PERA really -- and
5 again, we're going to get to these up front -- is completely
6 conflicted here. They seek to represent one class in the
7 district court and it's a very different class. What they want
8 to represent here are people who filed claims against a
9 different entity, and some people who have those claims aren't
10 even in the class action. So you have different claims,
11 different classes; they're in a total conflict situation and
12 can't represent them.

13 So what that means, Your Honor, is that all of those
14 issues can get addressed in the initial phase of the 7023
15 motion.

16 THE COURT: Mr. Slack, am I correct --

17 MR. SLACK: So what --

18 THE COURT: -- am I -- hold on. Am I correct, Mr.
19 Slack, if I go with your proposed ADR procedure, that loops the
20 whole 723/23 (sic) option, doesn't it?

21 MR. SLACK: It does, Your Honor. And what I would
22 say, though, is that they've made an objection which we're all
23 going to deal with. And our suggestion and our compromise
24 suggestion, Your Honor, is that Your Honor can hear the first
25 phase -- the Musicland, the conflicts issues, the law of the

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1 case and res judicata issues -- up front. And then the parties
2 don't have to engage in any discovery, we don't have to do
3 briefing on the Rule 23, and --

4 THE COURT: No, I got it.

5 MR. SLACK: -- if Your Honor --

6 THE COURT: I got it. I got it.

7 MR. SLACK: Yeah. So the one other point I want to
8 make, Your Honor -- can I make one other point, because I think
9 it's an important one --

10 THE COURT: Of course.

11 MR. SLACK: -- is our proposal, Your Honor, comes with
12 what I'll call a judge safety valve, and that is if we
13 bifurcate and we get to the hearing and Your Honor, at that
14 point, thinks that it would be better, more appropriate to
15 actually go through the Rule 23 issues, all you have to do,
16 Your Honor, is take the procedures motion under advisement and
17 order the parties to go and do that discovery and come back,
18 and there will be a delay of a month doing that, at most,
19 because we've got our hearing in a month.

20 And so I think, Judge, you can, sort of, guard against
21 this, and if it comes up that you think we need to do that
22 discovery at the hearing, we can go do it. You are the safety
23 valve.

24 THE COURT: So but Mr. Slack, also am I right, if you
25 persuade me to go with the ADR procedure entirely then that

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1 kills both sides of the PERA's procedure? They don't need to
2 bifurcate if you're denying it in any event. In other words,
3 stated differently, if I'm persuaded to go with the ADR
4 procedure, why would I consider any Rule 723 (sic), Rule 23
5 option?

6 MR. SLACK: Your Honor --

7 THE COURT: Isn't that right?

8 MR. SLACK: -- we agree with that. We absolutely
9 agree with that, and as I -- but as I said, as a compromise, we
10 were willing to have sort of that first phase heard at the same
11 time.

12 THE COURT: No, I'm not -- okay.

13 MR. SLACK: We don't think it's necessary, and that's
14 why it was a compromise.

15 THE COURT: Well, that's right, and that's why my
16 courtroom deputy informed you all that I was willing to do
17 that. And so it says the renewed motion, meaning the PERA
18 motion, would be bifurcated with the first hearing on November
19 17th. Mr. Tubbs is saying, no, let's have it unbifurcated
20 because of all these other things.

21 Okay. Well, I --

22 MR. DUBBS: May I be heard briefly, Your Honor?

23 THE COURT: Is that Mr. Dubbs again? Again, you
24 need --

25 MR. DUBBS: Yes, it is, Your Honor.

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1 THE COURT: Okay, yeah. Please, and anyone else who
2 speaks, too, you have to state your name.

3 Yes, sir, go ahead.

4 MR. DUBBS: I know. I apologize. Thomas Dubbs for
5 PERA.

6 The fundamental premise of their argument is two-fold.
7 One, it's an either/or choice, and what we're afraid of is that
8 the contours of the choice will not be presented to the Court,
9 and only half the choice will be presented to the Court. And
10 then they're going to say let's let the ADR train leave the
11 station, and we're stuck in the station; that's number one.

12 Number two is there's a fundamental misunderstanding
13 which can only be resolved by, unfortunately, a review of the
14 papers which Your Honor has not done, but I represent, having
15 done this for thirty years, that all class actions are not the
16 same. And this is not the kind of class action that is typical
17 in large securities cases which, Mr. Slack is correct, often
18 entail discovery up front.

19 The way this has been tailored has been under Rule 23,
20 to pick several discrete issues that don't require discovery
21 and have as their -- there are vectors that go to mediation of
22 critical issues to get the thing done. And if it's one whole
23 piece, and we would respectfully suggest that, Your Honor,
24 before you make a decision, because it is a bit of an either/or
25 decision, look at our whole proposal together which means

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1 looking at the 7023, looking at Rule 23 and how narrow we say
2 it is, even though Mr. Slack says it's very broad and he needs
3 tons of discovery -- but take a look at that, and if he's right
4 and it takes lots of discovery and you say to me, you know,
5 it's a great idea, but it's going to take six months of
6 discovery and we don't have six months, then so be it. We'll
7 pack our tent and go home. But I respectfully suggest you have
8 to look at both structures and compare them.

9 THE COURT: But your motion that you filed for the 723
10 (sic) lays out the two parts of it, right? In other words --

11 MR. DUBBS: That's correct.

12 THE COURT: Yeah. So you filed that on -- whenever
13 you filed it. It's document 9512. I mean, I have a copy of it
14 here. The footer doesn't show me exactly when it got filed,
15 but you know when you filed it. I just haven't read it yet.
16 So when I read it, I will get your take as to how this thing
17 bifurcates.

18 And so now fast forward to a hearing when we're
19 following Mr. Slack's proposal, where he's arguing his ADR
20 procedure should control and you're arguing that your
21 nonbifurcated procedure should control, you will argue to me
22 why I should put -- to use Mr. Slack's term, I should use my
23 safeguard and put the ADR thing on the back burner while I go
24 through whatever step you want to do. So all you have to do,
25 perhaps, at the hearing on the November 17th date is convince

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1 me that I need to wait; I need to go to that second phase.

2 I have to be honest with you, Mr. Dubbs, that -- I
3 shouldn't say that. I'm supposed to be honest with you whether
4 I say I'm being honest with you or not. When I learned that
5 you had filed this renewed 723 (sic) motion, my first reaction
6 to myself was why are they doing that again? They did that
7 last year, and I went with the claims procedure -- over their
8 objection, but that was the procedure -- and it just seemed
9 like a natural course that would follow was some way to resolve
10 it without using Rule 723 (sic). So whether it's 723 (sic) or
11 23 isn't the point. I made a note in my mind I've got to
12 understand what it is that PERA wants to do that I decided a
13 year ago we're not going to do, and what was so faulty with the
14 claims procedure that I'm just -- I don't want you to answer my
15 question; I'm just telling you that's what's going through my
16 head.

17 I think what I'm going to do, unless somebody
18 persuades me otherwise, is do my best to simply review the
19 underlying motions and decide whether to stick with the
20 compromised procedure or some other variation consistent with
21 Mr. Dubbs' request. I don't feel that I'm equipped with the
22 background that two large documents that I'm holding in my
23 hand, the two competing motions, are what I need to read. Some
24 of you were on the call two days ago when my internet wasn't
25 working very well. I've got a, important matter I'm working on

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1 that's submitted, but I can give this some immediate attention
2 and, a procedural matter, go with either the bifurcated
3 procedure or nonbifurcated, consists of Mr. Dubbs' request.
4 And I think I don't need anymore argument now, unless somebody
5 really needs to be heard, because I'm honestly telling you I
6 haven't got the background until I read these two papers.

7 So does anyone other than --

8 MR. DUBBS: I think that's --

9 THE COURT: -- the two counsel who have spoken --

10 MR. DUBBS: -- that's sufficient, Your Honor.

11 THE COURT: Okay. Well, other than Mr. Dubbs and Mr.
12 Slack, does anyone else wish to be heard on today's matter?

13 MR. ETKIN: Your Honor, it's Michael Etkin; I guess I
14 can't help myself.

15 THE COURT: Yes, sir. Yes, Mr. Etkin.

16 MR. ETKIN: And Mr. Dubbs can slap me down, but
17 assuming that this is the way Your Honor proceeds, I think one
18 little missing piece is that the reorganized debtors did
19 provide the Court with a four-page letter outlining their
20 substantive views on some of these issues. And I think in
21 order for the Court to have the full sense of not only what's
22 in the papers -- I think that given where we are right now, we
23 would like the opportunity to respond to that letter.

24 THE COURT: Well, that's the October 7th --

25 MR. ETKIN: -- which we have not done.

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1 THE COURT: -- Slack letter --

2 MR. ETKIN: That's correct, Your Honor.

3 THE COURT: -- (indiscernible).

4 MR. SLACK: Your Honor, I --

5 THE COURT: And what am I going to do when he asks for
6 a reply to your letter?

7 MR. SLACK: I mean -- Your Honor, Richard Slack. Can
8 I at least be heard for a moment on that request?

9 THE COURT: Yep.

10 MR. SLACK: And typically, if they were going to file
11 a letter, you file a letter and then you -- they could have
12 filed a letter in the last twenty-four hours, and then you have
13 argument. I think it's unfair to have argument where Mr. Dubbs
14 has been able to say whatever he's going to say in a letter and
15 then have a letter-writing campaign. And we would, of course,
16 want to be able to reply because, typically, you'd have the
17 letter and then you'd come and you'd have argument and we'd be
18 able to say what we're going to say.

19 So I think it's improper to have a letter at this
20 point, and if you do we would like to reply.

21 MR. DUBBS: This is Tom Dubbs, Your Honor.

22 I think, given Mr. Slack's response, which is not
23 surprising, and if I were in his shoes I'd probably be saying
24 the same thing, but the Court has said that you will review our
25 papers before coming up with a -- or view our papers as a whole

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1 before coming up with a scheduling order; that's good enough
2 for us, and a letter-writing campaign should not get in the way
3 of a review of the papers as a whole.

4 THE COURT: Okay. Mr. Dubbs, if you're colleague, Mr.
5 Etkin, slaps you down you've got to -- you guys can work that
6 out on your own. I'll go with that. I'm not going to take
7 anything more. I'll take the -- I've only got a thirty-five-
8 page motion from PERA, and I will -- look, let's do this.

9 I will try to do something very quickly that will
10 probably be nothing more than a docket text or something about
11 as long, but the default here is the schedule that has the
12 renewed motion bifurcated, per Mr. Slack's -- or was it --
13 yeah -- whoever wrote the email that came from my courtroom
14 deputy that said I'm willing to take Mr. Slack's proposal. So
15 that's a letter from Ms. Parada of my court on October 8th at
16 1:09 p.m., and that text just said Judge Montali is willing
17 to -- the default will be that procedure.

18 I will take what we said today and what the papers
19 say, and if I'm inclined to depart from that default, I will so
20 advise. So the deal is if I don't change anything, it's to go
21 with that procedure.

22 Okay. I want to conclude the hearing. I said I'd
23 call for comments from others, but I think I've got the
24 picture, and I'll leave it at that. I'll thank you all for
25 your time, and I will try to get something around on this very

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1 quickly. Thank you very much.

2 MR. SLACK: Thank you, Your Honor.

3 MR. DUBBS: Thank you very much, Your Honor.

4 THE COURT: Have a good day.

5 MR. ETKIN: Thank you, Your Honor.

6 THE COURT: Thank you.

7 MR. DUBBS: Bye-bye.

8 THE COURT: Thank you.

9 Thank you, Ms. Parada.

10 Thank you, CourtCall.

11 Thank you, gentlemen.

12 THE COURTCALL OPERATOR: Thank you, Your Honor.

13 (Whereupon these proceedings were concluded)

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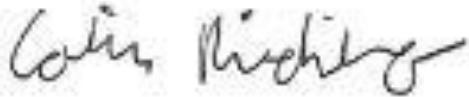
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C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ COLIN RICHILANO

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Date: October 16, 2020

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